

DAC 2686
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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q63704

FOSTICK, GIDEON, et al.

Appln. No.: 09/848,339

Group Art Unit: 2686

Confirmation No.: 6762

Examiner: Willie J. Daniel, Jr.

Filed: May 04, 2001

For: SMS AUTOMATIC REPLY AND AUTOMATIC HANDLING

**PETITION UNDER 37 CFR § 1.181 TO WITHDRAW A HOLDING
OF ABANDONMENT AND, ALTERNATIVELY, PETITION
UNDER 37 CFR § 1.137(b) TO REVIVE ABANDONED APPLICATION**

MAIL STOP PETITION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The undersigned, on behalf of Applicant, hereby petitions for reconsideration and withdrawal of the Notice of Abandonment mailed November 2, 2005. Alternatively, Applicant hereby petitions for withdrawal of the November 2, 2005, Notice of Abandonment on grounds that the Abandonment was unintentional.

I. Introduction

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On February 7, 2005, Applicant submitted an Appeal Brief under 37 CFR § 41.37 in the subject application. On June 3, 2005, the Examiner mailed a Notification of Non-Compliant Appeal Brief, which required Applicant to submit a new brief within 1 month. The Notification of Non-Compliant also identified those items in the February 7, 2005 Appeal Brief believed by the Examiner to be non-compliant under the Rules. On July 5, 2005, Applicant timely filed a

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Response to Notice of Non-Compliant Appeal Brief, along with a new Appeal Brief, which Applicant believed obviated the errors in the February 7, 2005 Appeal Brief. On November 2, 2005, the Examiner mailed a Notice of Abandonment indicating that the July 5, 2005 Appeal Brief was still not in full compliance. However, the November 2, 2005 Notice of Abandonment failed to identify what item(s) the Examiner believed was still not compliant under the Rules. Therefore, Applicant's undersigned representative contacted the Examiner to discuss the Notice of Abandonment. On December 6, 2005, Applicant was able to discuss the Notice of Abandonment with the Examiner, who indicated the reason for the Notice of Abandonment. Specifically, the Examiner indicated that on page 15 of the July 5, 2005 Appeal Brief, although the subheading is identified as "Claims 34 and 49," on both pages 15 and 16, the arguments refer to "claims 24 and 49" in some instances. In other instances, claims 34 and 49 are properly referenced. The Examiner stated no other reasons for finding the July 5, 2005 Appeal Brief not in full compliance.

II. Argument

Applicant respectfully submits that the November 2, 2005 Notice of Abandonment is improper. The subheadings contained in the July 5, 2005 Appeal Brief are all proper and accurate, and fully compliant with the Rules. The Examiner's only objection is that the supporting arguments in the Appeal Brief incorrectly refer in some instances to claim 24, instead of claim 34 when arguing the patentability of the appeal claims. However, as set forth below, it

is abundantly clear that the reference to claim 24 rather than claim 34 is simply a typographical error, which anyone reading the July 5, 2005 Appeal Brief would immediately understand.

First, although in some instances the supporting arguments incorrectly refers to claim 24, claim 34 is properly identified in the subheading, and the supporting arguments also correctly refer to claim 34. Specifically, page 16 of the November 2, 2005 Appeal Brief correctly states that "As is apparent, Takala does not teach each and every feature recited in claims **34** and 49, and therefore could not have anticipated these claims." (11-2-5 Appeal Brief, p. 16). Thus, claim 34 is correctly referred to in the supporting arguments, although claim 24 is also incorrectly referenced in some instances. Further, on page 7 of the July 5, 2005 Appeal Brief, under the sub-heading **Claims 34 and 49**, Applicant defined the subject matter of claims 34 and 49; this section contained no typographical errors, correctly identified claims 34 and 49 and accurately defined the subject matter recited in these appealed claims. Page 15 of the July 5, 2005 Appeal Brief, which likewise contained the subheading **Claims 34 and 49**, argued patentability using the same description of the subject matter defined in claims 34 and 49 found on page 7. Based on the description found on page 7 of the Appeal Brief describing the subject matter of claims 34 and 49, the arguments in support of patentability contained on pages 15-16, which describe the exact same claimed subject matter, as well as simply referring to the claims themselves, anyone reading the July 5, 2005 Appeal Brief would immediately understand that Applicant was arguing in support of claim 34, not claim 24, and that the Appeal Brief simply contains a typographical error. Moreover, the Rules refer to subheadings, not to the arguments in

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support of patentability. See § 41.37(c)(1)(vii). In fact, the Rules indicate that "Any claim argued separately *should* be placed under a subheading identifying the claims by number." *Id.* Thus, setting forth subheadings is not a requirement under the Rules. Further, the Rules contain no requirements as to the arguments under those subheadings. In any event, the subheadings contained in the July 5, 2005 Appeal Brief are correct; the Examiner complains only that the arguments under these subheadings contain a typographical error, and then only in some instances.

In view of the foregoing, Applicant respectfully submits that the Examiner's reading of the Rules are improper and Applicant's July 5, 2005 Appeal Brief was proper under the Rules. Therefore, Applicant respectfully requests reconsideration and withdrawal of the November 2, 2005 Notice of Abandonment.

In view of the above it is respectfully submitted that the application should not have been abandoned and the Commissioner is petitioned to withdraw the holding of abandonment.

Alternatively, the undersigned petitions the Commissioner to withdraw the November 2, 2005 Notice of Abandonment and revive the above application under 37 CFR §1.137(b) on the grounds that the abandonment was unintentional.

1. A proper response is submitted herewith in the form of a corrected Appeal Brief under 37 C.F.R. § 41.37 that corrects the typographical errors contained in the July 5, 2005 Appeal Brief.

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2. The USPTO is authorized to charge the petition fee of \$1,500 (37
C.F.R. § 1.17(m)) to Deposit Account No. 19-4880. The USPTO is directed and authorized to
charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account
No. 19-4880. Please also credit any overpayments to said Deposit Account. A duplicate copy of
this transmittal letter is attached.

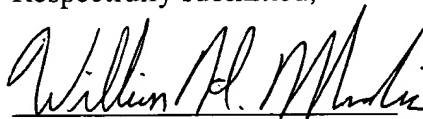
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WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Respectfully submitted,



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Date: December 23, 2005